



2003

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Automated Citation

Tseming Yang, *Of Borders, Fences and Global Environmentalism*, 4 CHI. J. INT'L L. 237 (2003),

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Of Borders, Fences, and Global Environmentalism

Tseming Yang*

They say that political boundaries are fictitious and arbitrary lines. At the US–Mexico border, however, that line is not just an imaginary concept but also a tangible, physical structure. Metal fences run along the border from San Diego, California to Brownsville, Texas. In the vicinity of its Pacific Ocean endpoint, the San Diego–Tijuana area, the fence is fourteen feet high. Hundreds of names are scrawled on the Mexican side of the fence, memorializing those who have died in their attempts to enter the US under the Immigration and Naturalization Service’s (“INS”) Operation Gatekeeper.¹ Before running more than a hundred yards into the Pacific Ocean, the fence divides a park that straddles the border. The park, dedicated by Pat Nixon in 1971, is named Parque de la Amistad—Friendship Park.²

* * *

When we think of international environmental problems, the problems that immediately come to mind are global climate change, ozone depletion, biodiversity loss, and transboundary pollution. They are salient because they fit the common perception that international environmental problems are in countries far away and largely outside of the direct reach of the US government. Many international environmental problems, however, can also be found much closer to home, at the US–Mexico border.

In August of 1999, I joined about a hundred other people at a conference on environmental justice at the US–Mexico border.³ The conference included a

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¹ See *Operation Gatekeeper Fact Sheet*, available online at <<http://www.ins.usdoj.gov/graphics/publicaffairs/factsheets/OpGateFS.htm>> (visited Feb 15, 2003).

² Parts of the area are also known as Border Field State Park.

³ See National Environmental Justice Advisory Council, *Draft Report, Unheard Voices From the Border: A Report on Environmental Justice in the U.S.–Mexico Border Region From the Past to the Future (Including the Proceedings of “The International Roundtable on Environmental Justice on the U.S.–Mexico Border (August 19–21, 1999, National City, CA)”*) (Dec 17, 2002), available online at

bus tour of the US–Mexico border region in San Diego, California, and a follow-up discussion with government regulators, community activists, and others about border environmental problems and their special impact on the poor and communities of color. I attended as a member of the National Environmental Justice Advisory Council's International Subcommittee, a federal advisory committee to the Environmental Protection Agency ("EPA").

Our bus tour began in the Barrio Logan community in southeast San Diego, a 90 percent Latino/African-American neighborhood. Barrio Logan suffers from a variety of urban environmental problems. Its mixed-use zoning allows the operation of industries such as chrome plating and chemical storage facilities in close proximity to, indeed sometimes just yards away from, residences and schools. Nearby Crosby Street Park is located on a brownfields site that still contains low levels of petroleum contamination. It was designed to allow residents access to the San Diego Bay, though fishing is now prohibited due to contamination. After visiting the reservation of the Pala Band of Mission Indians and a nearby farm labor camp, our buses headed to the international border.

Just across the border, in Tijuana, Baja California, we stopped at the Metales y Derivados battery recycling plant. The Metales site has become the poster child of the serious environmental pitfalls of liberalized US–Mexico trade and border industrialization.⁴ It is an abandoned maquiladora facility that formerly housed an open-air battery cracking and smelting operation.⁵ Ever since it began operations in 1987, however, it was repeatedly cited for serious regulatory violations.⁶ Not until 1993 did Mexican authorities formally commence judicial enforcement actions against it.⁷ In response, the US parent company, New Frontier Trading Corp., and its American owner, Jose Kahn, abandoned the plant.⁸ They left behind thousands of cubic meters of lead-contaminated wastes and heavy metal-laden soil.⁹

<<http://www.vermontlaw.edu/faculty/tyang/borderdraft5a.doc>> (visited Feb 5, 2003) (hereinafter *Unheard Voices from the Border*).

⁴ See *Metales y Derivados Final Factual Record* SEM-98-007 (Feb 7, 2002), available online at <<http://www.cec.org/files/pdf/sem/98-7-FFR-e.pdf>> (visited April 8, 2003) (hereinafter *Metales Factual Record*).

⁵ Id at 20–21. Maquiladoras are factories, mostly assembly plants, established for export production of goods on the Mexican side of the border region in order to take advantage of lower Mexican labor costs.

⁶ Id at 22.

⁷ Id at 17.

⁸ Id at 22.

⁹ See *Petition Before the Commission for Environmental Cooperation, Under Articles 13, 14, and 15 of the North American Agreement for Environmental Cooperation* (Oct 22, 1998), available online at <<http://www.environmentalhealth.org/CEC3.html#Petition>> (visited April 8, 2003) (hereinafter *CEC Petition*).

Recent studies have shown that the wastes contain lead, antimony, cadmium, and arsenic.¹⁰ Lead concentration in the subsoil has been measured at up to 178,400 mg/kg.¹¹ A 1999 Mexican government report stated that “the premises of the former company are a major health risk and ... the wastes found there must be given suitable treatment.”¹² The report further recommended that “urgent measures ... be implemented immediately” and that the government “initiate restoration measures immediately.”¹³ The Mexican authorities’ response to the serious public health risks was as simple as it was ineffective: plastic tarps were used to cover up the lead slag piles to protect them from rain and wind.¹⁴

When we arrived at the facility, we were greeted by a strong wind blowing heavy metal-contaminated dust from the facility directly toward our bus. We could see a low cinderblock wall surrounding the site. On the walls, the word “*peligro*” (danger) was painted in red in a number of prominent places. Inside the grounds, a building frame, almost a skeleton, with no covered roof was visible. All over the several-acre facility contaminated waste was stored in open-air piles, in sacks, and in fifty-five-gallon drums. When we got out of the bus, some of my tour compatriots covered their mouths and noses with handkerchiefs. The rest of us used various pieces of clothing, or simply tried to avoid breathing—which was clearly going to be difficult.

We walked down a dirt path next to the Metales facility to a point overlooking a nearby residential community of the working poor. Located just down the hill, Colonia Chilpancingo is a densely settled, ramshackle community, similar in appearance to a South American urban slum. Many of the residents there had begun to complain early on about the plant’s polluting activities, its illegal hazardous waste disposal practices, potential groundwater contamination, and health problems attributed to the plant’s pollution.¹⁵ Reports of skin and eye irritation as well as gastrointestinal problems were as common as dizziness, nausea, and other symptoms associated with lead exposure.¹⁶ The reported health problems of children were especially alarming. Families reported not only cases of infants with asthma and chronic skin irritations, but also newborns with birth defects and babies with anencephaly.¹⁷

When the Mexican government brought criminal charges against Jose Kahn in 1995, he simply stopped coming to Mexico.¹⁸ Nowadays, he lives

¹⁰ Id.

¹¹ Metales Factual Record at 26 (cited in note 4).

¹² Id. at 25.

¹³ Id. at 27.

¹⁴ CEC Petition (cited in note 9).

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Peter Fritsch, *Mexican Toxic-Waste Case Shows NAFTA's Limits*, Wall St J A12 (Jan 16, 2002).

comfortably, just across the border in San Diego.¹⁹ He still owns New Frontier, which remains an active San Diego-based corporation with estimated annual sales of seven hundred thousand to one million dollars.²⁰ None of Jose Kahn's assets have been attached nor has he been the subject of civil or criminal charges since his abandonment of Metales.²¹ If the overall situation is as puzzling as it is outrageous, the reason for Mr. Kahn's continued good fortune is simple: US law enforcement authorities have not received an extradition request from the Mexican authority for him.²² And given the prevailing interpretation of most federal environmental statutes as not extending outside of the US, federal government authorities have no power to act against him.

In 1998, the San Diego-based Environmental Health Coalition and Mexico-based Comité Ciudadano Pro Restauración del Canon del Padre y Servicios Comunitarios filed a citizen submission with the North American Environmental Commission on behalf of Colonia Chilpancingo.²³ Under the terms of Article 14 of the Commission's chartering agreement, nongovernmental organizations or private individuals may file submissions asserting that one of the North American Free Trade Agreement ("NAFTA") parties "is failing to effectively enforce its environmental law."²⁴ The Commission's subsequent investigation and factual findings confirmed many of the community's concerns.²⁵ Unfortunately, beyond a public acknowledgment of the validity of those community concerns, the Commission did not have the power to provide a substantive remedy.

On the way back to San Diego, we also passed by the International Wastewater Treatment Plant ("IWTP").²⁶ It was constructed as a binational project to improve human health conditions on both sides of the border. It processes up to twenty-five million gallons of raw sewage each day, with the bulk of its sanitary waste inflow coming from Tijuana.²⁷ The structures, located on the American side within a stone's throw of the border, appear towering even in the rocky, high desert landscape.

¹⁹ Id.

²⁰ CEC Petition (cited in note 9).

²¹ Id.

²² Id.

²³ Id.

²⁴ See North American Agreement on Environmental Cooperation, art 14(1), reprinted in 32 ILM 1480, 1488 (1993).

²⁵ Metales Factual Record at 8 (cited in note 4).

²⁶ See *Region 9 Water Programs: South Bay International Wastewater Treatment Plant Project*, available online at <<http://www.epa.gov/region09/water/iwtp>> (visited Feb 15, 2003).

²⁷ See U.S. Environmental Protection Agency and the U.S. International Boundary and Water Commission *Fact Sheet of April 1999* 1, available online at <<http://www.epa.gov/region09/water/iwtp/ibwc-eng.pdf>> (visited Feb 15, 2003).

In many respects, the IWTP is a remarkable project of environmental cooperation between a rich developed nation and its much poorer and less developed neighbor. Hepatitis is endemic to Tijuana, and cholera bacteria have been found on occasion in the Tijuana wastewater discharges. However, before concluding that the forty-two million dollar IWTP is a magnanimous gesture of a wealthy industrialized country, an exemplar of ecological thinking about the border environment, or a model of binational environmental cooperation, one must also understand the reality of the border without the IWTP. The topography of the Tijuana–San Diego border region creates a drainage pattern that has in the past caused Tijuana sanitary wastewater overflows to run directly across the border into the US and the surrounding Pacific Ocean waters.²⁸ The sewage discharges directly affect the health and safety of San Diego's southern suburbs and contaminate the beaches on which the San Diego tourist economy depends. When I lived in San Diego in the early 1990s, many of the numerous health advisories and beach closures were triggered by untreated sewage discharges from the Mexican side just a few miles south. If someone were to keep an ecological score, such sewage discharges could well be seen as payback for waste dumping by Americans, such as Jose Kahn, in Mexico.

If the tour of the border was sobering with regard to its environmental problems, the following days' presentations and emotional firsthand accounts were gut wrenching. Scores of residents and community activists spoke about their experiences and perceptions of the border environment, maquiladoras, and government agencies. Most of them raised concerns about regulatory and enforcement failures, especially on the Mexican side. Community activists pointed to a lack of potable water supplies, uncontrolled pollution emissions from the plants, abandoned hazardous waste sites, and illegal waste disposals in Mexico. Directly connected to these ills were also issues of inadequate health care resources, poor labor conditions in the maquiladora plants, consistent subordination of community needs to economic development considerations, and lack of access to and involvement by communities in regulatory decisionmaking processes.²⁹ Community residents emotionally recounted illnesses, birth defects, and deaths; stories of injustice with regard to treatment by government agencies and exploitation by businesses and employers; and social dislocation exacerbated by free trade policies and NAFTA. One especially moving account related the story of a farm worker's friend who suffered severe harm from exposure to chemicals spilled from the pesticide tank he was carrying on his back.³⁰ Another called attention to widespread instances of sexual assault and violence against female workers in maquiladora plants. The recurring theme

²⁸ Id.

²⁹ See *Unheard Voices From the Border* at 21–39 (cited in note 3).

³⁰ See id at app B, 16–17.

was one of disenchantment, frustration, and anger with US and Mexican government agencies about neglect and lack of responsiveness to problems identified by communities.

The border environment has been the subject of ongoing binational attention. For example, the EPA has been directly engaged in cooperative efforts with Mexico's environmental ministry since 1983.³¹ It is now in the process of planning border environment programmatic activities for the next ten years. Also, in 1994, the two governments created the Border Environment Cooperation Commission ("BECC") and the North American Development Bank ("NADBank"). Both were designed to plan and finance border environmental infrastructure projects.³² The International Boundary and Water Commission ("IBWC"),³³ the chief binational entity overseeing US-Mexico boundary matters since 1944, has also sought to address environmental matters, such as pollution of the Rio Grande and other binational waters. For example, the International Wastewater Treatment Plant is operated under the auspices of the IBWC. And finally, the trinational Commission for Environmental Cooperation ("CEC") has sought to promote international cooperative efforts across the entire North American continent, including the border.³⁴

Nevertheless, the reality of abandoned and polluted sites in Mexico, such as Metales y Derivados, continuing pollution spillovers from Mexico to the US, and many other environmental and social problems of the border remain. The underlying causes for the persisting problems are easy to identify: rapid economic development, poverty, and population growth. Rapid economic development has led to a tremendous increase in industrial sources of pollution. It has also set off an immense population boom with all its attendant environmental pressures. At the same time, poverty has created economic necessities that have largely pushed development of adequate environmental infrastructure and creation of strong environmental regulatory oversight and enforcement capabilities to the bottom of government priorities.

Some might be tempted to suggest that the US-Mexico border region is an atypical place with environmental and social problems uniquely attributable to the international border and associated jurisdictional boundaries. However, the salient characteristic of environmental problems of a global scale, as well as

³¹ Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, TIAS No 10827, reprinted in 22 ILM 1025 (1983).

³² Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environmental Cooperative Commission and a North American Development Bank, TIAS No 12516, reprinted in 32 ILM 1545 (1993).

³³ Treaty Between the United States of America and Mexico, 59 Stat 1219 (1944).

³⁴ See North American Agreement on Environmental Cooperation (cited in note 24).

those at the border, is their ability to adversely affect nations across jurisdictional boundaries. Because of the interconnectedness of the environment, one nation can impair common resources without regard to the individual prophylactic or remedial efforts of others. The shared environment at the border is a commons no different from the atmosphere, the oceans, or the biosphere. As with other places in the world where significant industrial development, environmental degradation, and population growth are occurring,³⁵ the border region contributes its share to climate change, biodiversity loss, and ocean pollution.

However, the parallels go deeper. Poverty, rapid industrialization, and population growth have made the resolution of environmental problems intractable not only at the border but also globally. The conditions in many developing countries show that the inability of the poor to take prudent environmental and public health measures significantly exacerbates pollution and environmental degradation. For example, when proper disposal is not affordable, wastes and garbage are simply dumped into streams and lakes, by the road, or in the countryside. Moreover, the quest for achieving the prosperity of developed countries has led developing countries to subordinate environmental priorities to economic and industrial development. Even where environmental measures have been successful, population pressures often threaten to undo their effectiveness.

Given these parallels, the question that the border raises for the global environmental protection efforts of the US is this: if we cannot solve the environmental problems in our backyard, how can we expect to effectively address them when they are half a world away? Four international institutions—the BECC,³⁶ the NADBank,³⁷ the CEC, and the IBWC—have targeted hundreds of millions of dollars in resources at the US–Mexico border region and yet have not managed to control most of the region’s environmental problems. How can multinational efforts, which depend heavily on US leadership and financial resources, manage global problems that involve population concentrations and environmental degradation problems of an even greater magnitude than in Mexico? How will they overcome the bureaucratic obstacles, the lack of regulatory structures, and the need for economic development in the world’s most impoverished third-world regions? Finally, how effective will multinational financial assistance resources be at achieving environmental objectives, given that such funding will at best be of comparable scale to what is expended at the US–Mexico border?

³⁵ Of course, unlike in other places, most of the population growth in the US–Mexico border region is attributable primarily to migration rather than high birth rates.

³⁶ See *Border Environment Cooperation Commission*, available online at <<http://www.cocef.org>> (visited Feb 15, 2003).

³⁷ See *North American Development Bank*, available online at <<http://www.nadbank.org>> (visited Feb 15, 2003).

The difficulties of resolving the problems at the US–Mexico border should make us realize that border region and world environmental problems are unlikely to be solved by programs that focus on pollution control and conservation of ecological resources alone. Just as human welfare cannot be ensured without adequate levels of environmental quality, so environmental quality cannot be preserved without adequate levels of human welfare.

* * *

Robert Frost once wrote in response to the age-old proverb “Good fences make good neighbors”:

Before I built a wall I’d ask to know
What I was walling in or walling out.³⁸

The existence of the border fences calls upon us to understand what social and political purposes borders serve. It is clear that the fences are not true physical barriers. Nature, pollution, and even people ignore the fences as attempts to curtail or control cross-border movements. Instead, the fences are part of the political construct that seeks to demarcate geographical areas of governmental responsibilities and societal concern for people and the environment. They have become a symbol of futile attempts to divide a region both environmentally and societally.

However, like natural communities, human communities are connected in ways that fences and borders alone cannot split apart. At a minimum, the shared environment creates unbreakable links between the human fortunes in other countries and our own. Free trade and globalization have only solidified those ties.

Our own welfare in the United States is reciprocally intertwined with that of others elsewhere on the globe, just as human welfare is with environmental quality more generally. That recognition is important not only as a matter of social justice and global equity, but also as a simple matter of enlightened self-interest. In the end, the task for global environmentalism in saving our planet is not only how to save our environment but how to save ourselves. The border region remains an important testing ground for that task.

³⁸ Robert Frost, *Mending Wall*, in *Collected Poems of Robert Frost* 48 (Henry Holt 1st ed 1930).